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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,772	01/23/2002	Jonathan Kost	5146-03	4588

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EXAMINER

THANH, QUANG D

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

BEST AVAILABLE COPY

Office Action Summary

Application No.

10/056,772

Applicant(s)

KOST, JONATHAN

Examiner

Quang D. Thanh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-9,21-26 and 36-40 is/are rejected.
- 7) ☒ Claim(s) 3-5,10-20 and 27-35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: "100A5Hz" appears to be an error, it should be replaced with – 100 Hz --. Appropriate correction is required.

Claim Objections

2. Claim 23 is objected to because of the following informalities: "100A5Hz" appears to be an error, it should be replaced with – 100 Hz --. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 6, 24-26, and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshio et al. (JP 410094576A). Re claims 1-2, 26 and 36-37, Yoshio discloses a massage device and a method for the treatment of lower back pain (figs. 11 a-b), the device comprising: two laterally spaced massage heads 20 (fig. 1), each head having vibration means 26/27/28 (fig. 6); a means (inclined plane 2B of case 2A as shown in fig. 12a would place each head 20 at a different vertical position) for positioning the massage heads vertically relative to one another; a means (guide groove

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17, fig. 3, abstract) for positioning the massage heads laterally relative to one another; each massage head has a housing enclosing the vibrations means, the housing includes a tube 19 having a bottom end and a top end, a bottom cap 29 disposed at the bottom end, a convex top cap 23 disposed at the top end opposite the bottom cap, and the vibrations means 26/27/28 is disposed within the housing (fig. 6). Re claim 24, the means for positioning the massage heads laterally comprises a base assembly M having two opposing bases slidably engaged in a track on a platform (fig. 1). Re claim 25, the means for positioning the massage heads vertically comprises a base assembly M having two opposing bases slidably engaged in a track on a platform (fig. 1).

4. Claims 1, 21, and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldfarb (3,310,050). Goldfarb discloses a massage device and a method for the treatment of back pain, the device comprising: two laterally spaced massage heads 39-41, each head having vibration means (figs. 3-4, col. 2, lines 48-58); a means (attachments 44-47 on vertical belts 42-43, fig. 7) for positioning the massage heads vertically relative to one another; a means (prong or buckle provided on the back of vibrator fitting into corresponding sockets 56-57 on belt 37, fig. 7, col. 4, lines 42-50) for positioning the massage heads laterally relative to one another. Re claim 21, a controller 24/25 (fig. 5, col. 2, lines 39-47) for modulating the vibration frequency. Re claim 37, the area of contact are the outer sides of the muscles that run along both sides of the spine (fig. 1 shows vibrators 2 and 3 that run along both sides of the spine).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 6-9, 26, 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldfarb in view of Wu (6,511,446). Re claims 2, 6-7, 26 and 39, Goldfarb discloses the claimed invention except it is silent regarding details for the housing that encloses the vibrator and it does not include any heating means. However, Wu discloses a massage bead structure having a vibrator 4 enclosed in a housing (fig. 1), the housing includes a tube 1 having a bottom end and a top end, a bottom cap 2 disposed at the bottom end, a convex top cap 9 disposed at the top end opposite the bottom cap, and the vibrations means 4 and heat generator 3 are disposed within the housing (fig. 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Goldfarb's reference, to include a housing with structure described above to enclose vibrating means and heating means, for the purpose of providing an enhanced combined therapeutic effect of vibrating massage and heating affect simultaneously when desired. Re claims 8-9, Wu further teaches that the means for heating the top cap is electrical resistance wire (col. 2, lines 18-24) and the top cap composed of a heat conducting material (col. 3, lines 14-19). Re claims 38 and 40, the duration of treatment

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is considered to be an obvious choice that a skill artisan can be readily able to determine based upon individual preferences and medical conditions.

6. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshio et al. in view of Murtonen (5,113,852). Yoshio discloses the claimed invention except that it is silent regarding the vibrating frequency of about 100 Hz. Murtonen teaches a device for applying vibrations to the human body utilizing a vibrating frequency of a preferable range 30-100 Hz. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Yoshio's device, to operate the vibration at a frequency of about 100 Hz, for the purpose of generating intensity pulses suitable for vibrating massage therapy to the human body.

Allowable Subject Matter

7. Claims 3-5, 10-20, 27-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Keizo (JP 409149924A) discloses a hand massage machine. Williams (4,343,303) discloses a stimulating apparatus. Chou (5,542,907) discloses a

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massage apparatus with multiple vibrator units. Taylor (5,611,771) discloses a head mounted pulse action facial massager.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Quang D. Thanh
Patent Examiner
Art Unit 3764

QT



NICHOLAS D. LUCCHESI
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December 11, 2003